

103<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# S. 338

To amend the Petroleum Marketing Practices Act to clarify the Federal standards governing the termination and nonrenewal of franchises and franchise relationships for the sale of motor fuel, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

FEBRUARY 4 (legislative day, JANUARY 5), 1993

Mr. FORD (for himself and Mr. KRUEGER) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

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## A BILL

To amend the Petroleum Marketing Practices Act to clarify the Federal standards governing the termination and nonrenewal of franchises and franchise relationships for the sale of motor fuel, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

3       **SECTION 1. SHORT TITLE.**

4       This Act may be cited as the “Petroleum Marketing  
5       Practices Act Amendments of 1993”.

6       **SEC. 2. CONVERSION TO COMPANY OPERATION.**

7       Section 102(b)(3)(A)(ii) of the Petroleum Marketing  
8       Practices Act (15 U.S.C. 2802(b)(3)(A)(ii)) is amended

1 by inserting after “purpose of” the following: “converting  
2 the leased marketing premises to operation by employees  
3 or agents of the franchisor for the benefit of the franchisor  
4 or otherwise”.

5 **SEC. 3. UNDERLYING LEASES.**

6 Section 102(c)(4) of the Petroleum Marketing Prac-  
7 tices Act (15 U.S.C. 2802(c)(4)) is amended—

8 (1) by striking “lease, if” and all that follows  
9 through “(B) of” and inserting the following: “lease,  
10 if—

11 “(A) the franchisee was notified in writing,  
12 prior to the commencement of the term of the  
13 then existing franchise—

14 “(i) of the duration of the underlying  
15 lease; and

16 “(ii) of”; and

17 (2) by adding at the end the following new sub-  
18 paragraphs:

19 “(B) during the 90-day period after notifi-  
20 cation was given pursuant to section 104, the  
21 franchisor offers to assign to the franchisee any  
22 option to extend the underlying lease or option  
23 to purchase the marketing premises that is held  
24 by the franchisor, except that the franchisor

1 may condition the assignment upon receipt by  
2 the franchisor of—

3 “(i) an unconditional release executed  
4 by both the landowner and the franchisee  
5 releasing the franchisor from any and all  
6 liability accruing after the date of the as-  
7 signment for—

8 “(I) financial obligations under  
9 the option (or the resulting extended  
10 lease or purchase agreement);

11 “(II) environmental contamina-  
12 tion to (or originating from) the mar-  
13 keting premises; or

14 “(III) the operation or condition  
15 of the marketing premises; and

16 “(ii) an instrument executed by both  
17 the landowner and the franchisee that en-  
18 sures the franchisor and the contractors of  
19 the franchisor reasonable access to the  
20 marketing premises for the purpose of test-  
21 ing for and remediating any environmental  
22 contamination that may be present at the  
23 premises; and

24 “(C) in a situation in which the franchisee  
25 acquires possession of the leased marketing

1 premises effective immediately after the loss of  
2 the right of the franchisor to grant possession  
3 (through an assignment pursuant to subpara-  
4 graph (B) or by obtaining a new lease or pur-  
5 chasing the marketing premises from the land-  
6 owner), the franchisor (if requested in writing  
7 by the franchisee not later than 30 days after  
8 notification was given pursuant to section 104),  
9 during the 90-day period after notification was  
10 given pursuant to section 104—

11 “(i) made a bona fide offer to sell,  
12 transfer, or assign to the franchisee the in-  
13 terest of the franchisor in any improve-  
14 ments or equipment located on the prem-  
15 ises; or

16 “(ii) if applicable, offered the  
17 franchisee a right of first refusal (for at  
18 least 45 days) of an offer, made by another  
19 person, to purchase the interest of the  
20 franchisor in the improvements and equip-  
21 ment.”.

22 **SEC. 4. WAIVER OF RIGHTS.**

23 Section 105 of the Petroleum Marketing Practices  
24 Act (15 U.S.C. 2805) is amended by adding at the end  
25 the following new subsection:

1 “(f)(1) No franchisor shall require, as a condition of  
2 entering into or renewing the franchise relationship, a  
3 franchisee to release or waive—

4 “(A) any right that the franchisee has under  
5 this title or other Federal law; or

6 “(B) any right that the franchisee may have  
7 under any valid and applicable State law.

8 “(2) No provision of any franchise shall be valid or  
9 enforceable if the provision specifies that the interpreta-  
10 tion or enforcement of the franchise shall be governed by  
11 the law of any State other than the State in which the  
12 franchisee has the principal place of business of the  
13 franchisee.”.

14 **SEC. 5. PREEMPTION.**

15 Section 106 of the Petroleum Marketing Practices  
16 Act (15 U.S.C. 2806) is amended—

17 (1) in subsection (a)—

18 (A) by inserting “(1)” after “(a)”; and

19 (B) by adding at the end the following new  
20 paragraphs:

21 “(2) Nothing in this title shall limit the ability of a  
22 State or any political subdivision of a State to regulate  
23 any specific provision of a franchise.

24 “(3) No State or political subdivision of a State may  
25 adopt, enforce, or continue in effect any provision of law

1 (including a regulation) that requires a payment for the  
2 goodwill of a franchisee on the termination of a franchise  
3 or nonrenewal of a franchise relationship authorized by  
4 this title.”; and

5 (2) in subsection (b)—

6 (A) by inserting “(1)” after “(b)”;

7 (B) by adding at the end the following new  
8 paragraph:

9 “(2) Nothing in this title shall prohibit any State  
10 from specifying the terms and conditions under which any  
11 franchise or franchise relationship may be transferred to  
12 the designated successor of a franchisee upon the death  
13 of the franchisee.”.

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